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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL CADENAS,

Defendant and Appellant.

H046065

(Santa Clara County

Super. Ct. No. C1767946)

Defendant Manuel Cadenas pleaded no contest to driving under the influence of alcohol with a blood alcohol level of 0.08 percent or more with a felony prior conviction within 10 years (Veh. Code, §§ 23152; 23550.5, subd. (a)). Cadenas also admitted he had been convicted of two prior convictions under Penal Code sections 667, subdivisions (b)-(i) and 1170.12 (strike priors). The court sentenced Cadenas to four years in state prison.

On appeal, Cadenas's appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) that raises no issue. We notified Cadenas of his right to submit written argument on his own behalf within 30 days. On October 29, 2018, we received a letter from Cadenas asserting that his attorney misinformed him of the amount of time he would serve while in prison, and that his strike priors could not be used to enhance his sentence.

Pursuant to *Wende*, we have reviewed the entire record and find that there is no arguable issue on appeal. We affirm the judgment.

### **I. STATEMENT OF THE FACTS AND CASE**

A complaint was filed in Santa Clara County Superior Court on July 7, 2017 charging Cadenas with driving under the influence of alcohol with a felony prior within 10 years and with four prior convictions for driving under the influence (Veh. Code, §§ 23152, subd. (a); 23550.5, subd. (a); count one); driving under the influence of alcohol with a blood alcohol level of 0.08 percent or more with a felony prior conviction within 10 years and four prior convictions for driving under the influence (Veh. Code, §§ 23152, subd. (b); 23550.5, subd. (a); count two); and driving with a license that was suspended or revoked for driving under the influence (Veh. Code, §14601.2, subd. (a); count three). The complaint also alleged that Cadenas had suffered two strike priors (Pen. Code, §§ 667, subds. (b)-(i);1170.12); and two prison priors (Pen. Code, § 667.5, subd. (b)).

On April 12, 2018, Cadenas pleaded no contest to driving under the influence of alcohol with a blood alcohol level of 0.08 percent or more with a felony prior conviction within 10 years and four prior convictions for driving under the influence (Veh. Code, §§ 23152, subd. (b); 23550.5, subd. (a); count two) and admitted the prior convictions for driving under the influence and the two strike priors. (Pen. Code, §§ 667, subds. (b)-(i); 1170.12.) In exchange for his plea, Cadenas was promised a sentence of four years in prison, and that all of the remaining allegations in the complaint would be dismissed. On May 18, 2018, the trial court sentenced Cadenas to four years in state prison, calculated by doubling the midterm for count two (2 X 2 years) as required because of his strike priors, and dismissed all of the remaining priors and allegations.

Cadenas filed a timely notice of appeal on July 17, 2018.

### **II. DISCUSSION**

Cadenas has raised two potential issues in his supplemental letter. Although he does not label them as such, from the content of his letter, we characterize one issue as a claim of ineffective assistance of counsel and the other as a claim of sentencing error by the trial court.

Cadenas states his lawyer told him that he “would be serving only 50 percent of [his] time and that [he] might even qualify to serv [*sic*] on 33 percent.” Cadenas states that while in prison, he discovered that he will be serving 80 percent of his sentence, and he qualifies “for serving only 66 percent.”

To the extent Cadenas is attempting to assert that his counsel provided him ineffective assistance because he misrepresented the amount of time Cadenas would serve in prison, the record does not support this claim. To demonstrate ineffective assistance of counsel on appeal, the record must show that counsel’s performance was deficient and that Cadenas was prejudiced as a result. (*Strickland v. Washington* (1984) 466 U.S. 668, 687.) We “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. . . . If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.” (*Id.* at p. 697.)

On a review of the record before us, we find no indication that trial counsel provided inaccurate information to Cadenas. But even if we accept Cadenas’s premise that his attorney provided him with incorrect information about the actual time he would serve in prison, Cadenas does not demonstrate that he would have received a more favorable result, for instance, a reduced sentence, if he had been provided with information about the actual time he is required to serve in prison before release. Cadenas cannot show that he was prejudiced by his attorney’s alleged actions based on the appellate record; he therefore does not have an arguable claim for ineffective assistance of counsel on appeal.

The second issue Cadenas raises appears to be sentencing error. He states, “under new law Prop 57 I was under the impression that they could no longer use my prior strikes as enhancements to double my base terms.” Cadenas does not raise an arguable issue of sentencing error, because he agreed to his four-year prison term as part of his plea bargain. “The fact that a defendant has received a benefit in return for agreeing to accept a specified sentence is itself sufficient to estop that defendant from later seeking to

unfairly supplement this benefit by mounting an appellate attack on the trial court's imposition of the specific sentence which the defendant agreed to accept." (*People v. Couch* (1996) 48 Cal.App.4th 1053, 1057.)

We have conducted an independent review of the record pursuant to *Wende*, and find that there is no arguable issue on appeal.

### **III. DISPOSITION**

The judgment is affirmed.

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Greenwood, P.J.

WE CONCUR:

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Elia, J.

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Grover, J.

People v. Cadenas  
No. H046065